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February 29, 2012

To: Supervisor Zev Yaroslavsky, Chairman
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

A handwritten signature in black ink, appearing to be "W. T. Fujioka", written over a horizontal line.

STATUS OF THE IMPLEMENTATION OF ABX1 26 RESULTING IN REDEVELOPMENT AGENCIES BEING DISSOLVED (AGENDA ITEM A-7, MEETING OF MARCH 6, 2012)

Item No. A-7 on the March 6, 2012 Agenda is to provide your Board the status of the implementation of ABX1 26 (Chapter 5, Statutes of 2011) resulting in Redevelopment Agencies (RDAs) being dissolved. The purpose of this memorandum is to provide an analysis on AB 1585 (Pérez), which would modify various provisions of ABX1 26, and to request direction from your Board to advocate on this measure.

As explained below, approval of a County position on AB 1585 (Pérez) is a matter for Board policy determination.

Overview

AB 1585, which as introduced on February 2, 2012, would modify provisions of ABX1 26 related to: 1) the distribution of Low Moderate Income Housing (LMIH) funds; 2) the definition of the terms enforceable obligation and administrative cost allowance; 3) the responsibilities of the successor agency and oversight board; and 4) the responsibilities of the auditor-controller, among other provisions. The bill contains an urgency clause making it effective immediately, if passed by a two-thirds vote of the Legislature and signed by the Governor.

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Some provisions of AB 1585 are similar to those contained in **County-supported SB 654 (Steinberg)**, others are new. In general, the amendments in AB 1585 were requested by the League of Cities and the California Redevelopment Agency as well as labor. Significant differences between the two bills are described below.

AB 1585 contains the following major provisions:

Transfer of LMIH Funds. Like SB 654, AB 1585 would allow the local housing authority or the California Department of Housing and Community Development to retain LMIH funds if the city or county chooses not to assume the housing functions previously performed by a RDA. **The County supports this provision.**

AB 1585 would further specify that if a city or county has not encumbered 80 percent of monies in the LMIH fund within three years of receiving the funds, the excess amount, minus the amount necessary for monitoring and maintaining ongoing housing projects, shall be allocated to the auditor-controller for existing housing purposes. **The Board has not taken a position on this provision.**

Purpose: According to the author's office, this amendment is intended to allow more time for a city or county to spend LMIH funds.

Expansion of the Enforceable Obligation Definition. Like SB 654, AB 1585 would expand the definition of an enforceable obligation to include two additional types of loan agreements between a RDA and its host city or county: 1) a loan that was executed within two years of the date of the creation of a project area, if the loan is specific to that project area; and 2) a loan to fund the RDA's FY 2009-10 Supplemental Educational Revenue Augmentation Fund (SERAF) payment to schools. **The County supports this provision.**

AB 1585 would further expand the definition of an enforceable obligation to include: 1) other loan agreements between the RDA and the city and county if the oversight board finds that the loan was for a legitimate redevelopment purpose, had economic substance, and was based on reasonable repayment terms; and 2) payments for costs incurred to fulfill collective bargaining agreements for layoffs or terminations of city employees who performed work directly on behalf of the former RDA. **The Board has not taken a position on this provision.**

Purpose: According to the author's office, the first part of the amendment was requested by the City of San Jose and Lake County who indicated that under ABX1 26 a city or county could be forced to default on a lawfully executed loan. This amendment is intended to provide the oversight board with the ultimate authority to consider and

allow such loans. The amendment expanding an enforceable obligation for collective bargaining purposes was requested by the City of Oakland and labor and it relates to a city that does not have a separate RDA. The amendment is intended to provide funding to avoid layoffs and provide a clear basis for layoffs if approved by the oversight board.

Expansion of the Administrative Cost Allowance. ABX1 26 provides an administrative cost allowance for successor agencies of up to 5 percent of the property tax revenue allocated to the successor agency for FY 2011-12, and up to 3 percent annually thereafter, but not less than \$250,000 annually.

AB 1585 would expand the definition of the administrative cost allowance to specify that: 1) employee costs associated with work on specific project implementation activities, including, but not limited to, construction inspection, project management, or actual construction, shall be considered project-specific and are not administrative costs; and 2) the oversight board may approve temporary increases to the administrative cost allowance to carry out the requirements of an enforceable obligation, cover litigation costs, or to maintain and preserve the value of assets while in the possession of the successor agency. **The Board has not taken a position on this provision.**

Purpose: *According to the author's office, the first amendment is related to the expansion of an enforceable obligation to collective bargaining provisions described above. The second amendment is intended to enable termination of existing agreements by successor agencies upon a challenge from a project developer.*

Expansion of Successor Agencies and Oversight Board Responsibilities. AB 1585 would authorize successor agencies, with oversight board approval, to enter into agreements to fund required payments under enforceable obligations that exceed the amount of property tax revenue available to the RDA during the payment period. AB 1585 also would require successor agencies to take inventory of all of their real property assets and report the results to the oversight board. **The Board has not taken a position on this provision.**

Purpose: *According to the author's office, this amendment is intended to clarify that the oversight board has the flexibility to enter into payment agreements only as it relates to existing enforceable obligations.*

Expansion of Auditor-Controller Responsibilities. AB 1585 would require the auditor-controller to reserve additional funds in the Redevelopment Property Tax Trust Fund at the time of the annual January 16th allocation, if necessary, to cover payments

made in the second half of the calendar year that are in excess of amounts anticipated to be deposited from the allocation in May or June. **Support for this amendment is consistent with your Board directive of January 17, 2012, to take all actions which are necessary to successfully implement the requirements and goals of ABX1 26.**

Potential County Impact

Transfer of the Low and Moderate Income Housing Funds

As previously reported, according to the January 31, 2012 Senate Floor analysis of SB 654, the retention of undesignated LMIH by host cities or counties will prevent the reallocation of approximately \$1.36 billion in unreserved LMIH funds to local governments and schools. The analysis notes that this amount could increase if it is later determined that amounts reported by RDAs as reserved are not enforceable obligations. The analysis also indicates that to the extent that SB 654 prevents property tax revenues from flowing to schools following the dissolution of the RDAs, there would be a corresponding loss of State General Fund savings, which would otherwise offset the Proposition 98 guarantee to education. Assuming that 50 percent of this revenue would be allocated to schools, the Senate analysis estimates a one-time State General Fund loss of as much as \$700.0 million. The remaining \$700.0 million in property tax revenue would no longer be available for reallocation to counties, cities, or special districts. **Since the LMIH provisions in SB 654 are the same in AB 1585, these fiscal impact assumptions would also apply.**

According to the FY 2009-10 California Redevelopment Agencies Report issued by California Department of Housing and Community Development as of June 30, 2010, RDAs in Los Angeles County had unencumbered/undesignated balances in their LMIH Fund of approximately \$233.0 million. **Pursuant to the RDA dissolution provisions in ABX1 26 of 2011, these funds are to be distributed to taxing entities, including the County General Fund which may potentially be entitled to \$70.0 million to \$93.0 million (30 percent to 40 percent) of undesignated LMIH funds.** It is very difficult to determine the potential amount of LMIH funds which could be reallocated to the County, because the only data available at this time is from FY 2009-10 and the type of financial obligations RDAs may have entered into prior to their dissolution on February 1, 2012 is unknown.

County Counsel indicates that should unencumbered LMIH fund balances not be transferred to the auditor-controller for allocation as property tax revenue, local taxing entities would be negatively impacted. County Counsel further indicates that absent this proposed amendment in AB 1585 the County would receive its proportionate share of property tax revenue.

County Counsel further notes that provisions which specify that if a city or county has not encumbered 80 percent of monies in the LMIH Fund within three years, the excess amount would be allocated to the auditor-controller for housing purposes, AB 1585 does not clearly indicate what the auditor-controller is required to do with these funds.

The Community Development Commission (CDC) indicates that under the provisions of AB 1585, it would be entitled to retain its share of undesignated LMIH funds by transferring them to Housing Authority for the County of Los Angeles (HACoLA). According to the CDC, approximately \$150,000 in non-encumbered CDC LMIH funds would go to HACoLA instead of being returned to other taxing entities, such as school districts, County General Fund, and special districts.

Expansion of the Enforceable Obligation Definition

Any expansion of the scope of what is deemed to be an enforceable obligation, beyond that which is provided in ABX1 26, would reduce the total amount of tax increment that would otherwise be returned to taxing entities, such as the County.

It is very difficult to estimate the fiscal impact from the expansion of the enforceable obligation definition because the extent of the impact would depend on the types of loan agreements executed on RDA projects within the two year period, as proposed in AB 1585. While we have found some preliminary examples within the County, where this provision would apply, most of this information would not be available to county auditor-controllers and oversight boards until months after the dissolution of RDAs when all audits have been completed.

This office, County Counsel and Auditor-Controller note that should enforceable obligations be expanded to include loans from host cities or counties to their former RDAs within two years of the establishment of a new project area, as proposed in SB 654 and AB 1585, local taxing entities, including the County, would be negatively impacted.

Based on a preliminary analysis of Auditor-Controller data provided by redevelopment agencies, it is estimated that there is roughly \$856.0 million (principal and interest) of existing loan agreements between RDAs and host cities or counties. By analyzing a sample of existing agreements between RDAs and host cities, it was determined that an estimated 10 percent of those contractual obligations would qualify as "additional enforceable obligations" pursuant to the provisions of AB 1585. **Therefore, it is estimated that the expansion of the enforceable obligation definition under AB 1585 could result in the potential loss of \$85.0 million for taxing agencies**

within Los Angeles County, of which the County General Fund could lose approximately \$34.0 million.

Furthermore, AB 1585, unlike SB 654, also proposes to consider other loan agreements between a host city or county and a former RDA as enforceable obligations, if an oversight board makes a finding that the loan was for a legitimate redevelopment purpose, had economic substance and was based on reasonable payment terms. It is difficult to estimate the impact of this amendment because it is nearly impossible to know which loans would meet the criteria and whether oversight boards would exercise their discretion to treat the loans as enforceable obligations. In addition, a major concern of the Chief Executive Office, County Counsel, and the Auditor-Controller has been the potential for a number of RDAs that had been actively issuing debt during 2011. According to County Counsel, even if only one such loan is treated as an enforceable obligation it will result in significantly less property tax revenue for local taxing entities. AB 1585 would override provisions in ABX1 26 which prohibit agreements entered into after December 2010 from being considered enforceable obligations.

The Legislative Analyst's Office (LAO) notes that during the legislative debate on redevelopment on 2011 many RDAs throughout the State took actions to transfer or encumber assets and future tax increment revenues in anticipation that RDAs would be eliminated.

In addition to transferring existing assets, the LAO indicates that many RDAs entered into cooperation agreements with their city, county, or another local agency. Under these agreements, the city, county, or other local agency would carry out existing and future redevelopment projects. The LAO points out that local agency staff and officials appeared to assume that if the Governor's proposal to eliminate RDAs was enacted, the cooperation agreements would be an enforceable obligation, requiring the allocation of future tax increment revenues as payment for performing the agreement.

According to published reports on redevelopment activity, the three largest RDAs in the County, Los Angeles, Long Beach, and Santa Monica adopted "agreements" that sought to transfer a combined \$2.0 billion from their RDAs to the cities. It is very difficult to determine what the total amount of transfer activity could be for all RDAs in the County because only limited data is available and the type of financial obligations RDAs may have entered into prior to their dissolution on February 1, 2012 is unknown. However, it appears that AB 1585 could legitimize these actions at a significant cost assuming an estimated County share of 30 to 40 percent.

Lastly, County Counsel indicates that the impact of expanding the definition of enforceable obligation to include the costs to fulfill collective bargaining agreements for city employees who perform work for the former RDAs is unclear at this time. However, under current law collective bargaining Memorandums of Understanding are considered enforceable obligations. The Auditor-Controller indicates that this provision could eliminate protections under current law, which may be interpreted to define the set of agreements deemed an enforceable obligation.

Expansion of Administrative Cost Allowance

County Counsel indicates that any increase in the administrative cost allowance would potentially result in a negative impact because it would reduce property tax allocations to all local taxing entities, including the County. Further, by specifying that certain employee costs would be considered project-specific and not administrative costs, successor agencies would be allowed to collect more property tax increment by avoiding having to include employee costs in the administrative cost allowance.

The Auditor-Controller indicates that the provisions expanding the administrative cost allowance are too broad and could lead to potential abuses by successor agencies, and provisions related to employee costs could eliminate administrative cost allowance limits established in ABX1 26.

Overall the expansion of administrative cost allowance would result in a significant diversion of property taxes away from taxing entities.

Expansion of Successor Agencies and Oversight Board Responsibilities

County Counsel indicates that allowing successor agencies to enter into agreements to fund enforceable obligation payments that exceed the amount of property tax revenue could address cash flow problems; however, this provision could result in successor agencies directing property tax revenues to address other funding needs.

With regard to requiring successor agencies to take an inventory of all of their real property assets, County Counsel notes that this provision would benefit auditor-controllers performing audits of former RDAs and the Auditor-Controller concurs.

Expansion of Auditor-Controller Responsibilities

The Auditor-Controller indicates that provisions to require funds to be placed in reserve to cover payments made in the second half of the calendar year that are in excess of

amounts anticipated from the allocation in May or June would be beneficial to the successful implementation of ABX1 26.

Board-Approved Policy

Historically, the County has opposed redevelopment proposals which would extend the receipt of tax increment revenues by RDAs and divert property tax revenues from local taxing entities by: 1) expanding the definition of redevelopment and therefore eligible RDA debt; 2) extending the time period of RDA indebtedness on existing project areas; 3) expanding the purpose of redevelopment; and 4) redirecting redevelopment funds for activities inconsistent with the objectives of redevelopment law. The County has also advocated to strengthen the requirements Community Redevelopment Law to prevent redevelopment abuse. In addition, on January 31, 2012, your Board voted to support SB 654 (Steinberg) which would allow cities and counties to retain undesignated LMIH Funds.

Conclusion

Since there is divergence between the County's existing Board-approved policies regarding redevelopment, affordable housing legislation, your Board's support of SB 654, and some of the provisions in AB 1585 including the expansions of: 1) the enforceable obligation definition; 2) administrative cost allowance; 3) successor agencies responsibilities; and 4) oversight board responsibilities, approval of a County position on AB 1585 is a matter for Board policy determination.

AB 1585 has been referred to the Assembly Local Government and Housing and Community Development Committees. As of February 29, 2012, committee hearings have not been scheduled. There is no register support or opposition on file.

We will continue to keep you advised.

WTF:RA
MR:VE:sb

c: Executive Office, Board of Supervisors
County Counsel